D3

30. (Amended) The method of claim 29, further comprising:
a cooling fluid lumen positioned in [the] a membrane.

REMARKS

The Examiner has rejected Claims 27 and 30 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Specifically, the Examiner states that there is insufficient antecedent basis for the limitation "in the membrane" in said claims.

Applicant has amended claims 27 and 30 to overcome this ground of rejection.

Claims 23 and 24 are rejected under 35 U.S.C. § 102(e) as being anticipated by Lax et al. (U.S. Patent No. 5,458,569). Applicant respectively traverses this ground of rejection.

Claim 23 has been amended and provides a method of liposculpturing an area of the body which includes collagen tissue that is located subcutaneously below a skin surface. An energy delivery surface of a thermal energy delivery device is positioned on an external surface of the skin surface. A reverse thermal gradient is created which cools a top surface of the skin while heating an underlying loculation of fat. A temperature of the external skin surface is lower than a temperature of the underlying loculation of fat. The skin and underlying loculation of fat are heated sufficiently to contract the collagen tissue of the fibrous septae while minimizing cellular destruction of the external skin surface. At least a portion of the external surface of the skin is then tightened.

Lax et al. provides a method for the contraction of collagen by positioning an energy delivery surface directly on the collagen containing tissue without passing through the skin.

> "...RF energy, thermal energy, is delivered to collagen soft tissue. The thermal energy penetrates more than 1 mm through the collagen soft tissue. The penetration can be as much as about 3 mm. Electrode 14 is painted across the collagen soft tissue sequentially until the maximum shrinkage occurs." See Spec., column 10, lines 23 through 28.

Electrode 14 of Lax et al. includes a distal end that is adapted to be positioned directly on the collagen containing tissue to be contracted. See Spec., column 6, lines 27 through 36. Electrode 14 has a geometry that permits it to be easily painted across the collagen containing tissue. See Spec., column 6, lines 34 through 36.

As illustrated in Figure 10, an electrolytic solution provides an enhanced electrode. An insulating housing 46 creates a dam of the electrolytic solution adjacent to the tissue and electrical energy is transferred from electrode 14 to the electrolytic solution and then to the collagen containing tissue site. See Spec., column 8, lines 39 through 43. Again, energy used for collagen contraction is delivered directly to the collagen tissue and not through the skin. Even though the electrolytic solution can be cooled, it is still used to directly transfer energy to the collagen containing tissue.

Lax et al. is particularly directed to orthopaedic applications.

> "The RF energy is delivered through endoscopically guided handpiece 12 in a fluid or saline environment within the joint. It can be under arthroscopic visualization by the surgeon, or the apparatus can include a viewing device. The invention accurately controls the application of heat within a specific thermal range, and then delivers thermal energy to collagen soft tissue of the joint, thereby contracting and restricting the soft tissue elasticity and improving joint stability. When applied to the shoulder, there is capsular shrinkage of the gleno-humoral joint capsule of the shoulder and a consequent contracture of the volume, the interior circumference, of the shoulder capsule to correct for recurrent instability symptoms. The degree of capsular shrinkage is determined by the operating surgeon, based on severity of preoperative symptoms and condition of the capsule at the time of arthroscopic inspection. The maximum amount of collagen contraction achieved is approximately two-thirds of its original structure." See Spec., column 10, lines 44 through 63.

Lax et al. does not teach the present invention of liposculpturing an area of the body by the application of thermal energy through a skin surface to an underlying area made of a loculation of fat that has collagen tissue as a fibrous septae. Lax et al. does not teach contracting underlying collagen containing tissue in order to tighten skin. Lax et al. does not heat the skin and the underlying loculation of fat which contains collagen tissue in order to tighten the skin. Lax et al. does not teach how its invention can be used to contract underlying collagen containing tissue in order to tighten the overlying skin surface.

Additionally, Lax et al. does not render the claims of the present invention obvious because there is no suggestion or teaching that skin can be tightened. Instead, Lax et al. is only directed to the contraction of collagen containing tissue but fails to teach how an overlying skin surface can be tightened by contracting underlying collagen containing tissue while minimizing cellular destruction of the skin surface.

CONCLUSION

It is submitted that the present application is in form for allowance, and such action is respectfully requested.

The Commissioner is authorized to charge any additional fees which may be required by this paper to Deposit Account No. 23-2415 (Docket No. 15867-705 (KNOW 1001DIV 1). A duplicate copy of this paper is enclosed.

Respectfully submitted,

WILSON, SONSINI, GOODRICH & ROSATI

Date 7/15/97 By: _____
Paul Davis, Reg. No. 29,294

650 Page Mill Road
Palo Alto, California 94304
(415) 493-9300